

Seth Shiloh Schermerhorn

August 10, 2006

Page 34

1 information, could you tell what affiliate sent the
2 email?
3 A. Not usually, because when they link inside
4 the email, they know that they're sending fraudulent
5 traffic that's not allowed, so they refer it through a
6 country like -- I don't know -- China or something,
7 and usually by the time that the surfer complains
8 about it and forwards us the email, the domain that
9 they were referring to has already been blocked and
10 taken down and there's just no way for us to even see
11 what their SoulCash affiliate ID was.

12 Q. Have there been any instances where you
13 could tell what affiliate sent the email?

14 A. Never.

15 Q. Have any affiliates been terminated by IMG
16 as a result of a complaint?

17 A. Not as a result of a complaint.

18 Q. When you received these spam complaints, how
19 did you receive them?

20 A. Via email to -- there's various emails that
21 surfers find on our websites.

22 Q. Does IMG have a designated email address for
23 spam recipients to forward their complaints?

24 A. No.

25 MR. APGOOD: I object to the extent that it

Page 35

1 implies that such a duty exists.

2 Q. You testified about the ISP being blocked
3 when you received the -- sorry. Can you restate what
4 you said about the ISP being blocked when you received
5 a complaint.

6 MR. APGOOD: Objection to the extent that it
7 mischaracterizes testimony substantially.

8 A. It was at the -- it wasn't the ISP, but at
9 the actual data center level, and I was just saying
10 I'm not sure what he does, but I know that he's also
11 concerned about any fraudulent emails, so he has his
12 fraud controls that he does. One of them, I think I
13 said that you could like see the IP that the traffic
14 was being referred from and block it before it even
15 makes it to our servers in the data center.

16 Q. Do you know of any specific action that was
17 taken at the data center level as a result of a spam
18 complaint you forwarded on?

19 A. No.

20 Q. Have you received spam complaints via other
21 means than email?

22 A. I think once or twice people may have even
23 called our office via phone numbers that are
24 published.

25 Q. Has IMG ever terminated an affiliate for

Page 36

1 promoting IMG's websites through spam?

2 A. Yes.

3 Q. What were the circumstances?

4 A. I don't specifically remember. But somehow
5 we were able to actually track their affiliate ID,
6 like maybe their referring URL wasn't taken down or I
7 think -- I don't remember exactly, but we were able
8 to associate their complaints. Because usually they
9 come through SpamCop or SpamHouse, somebody's doing
10 fraudulent marketing via email, and my host will
11 contact me and let me know and give me whatever
12 information he has.

13 Q. Since January 1st, 2004, how many
14 affiliates has IMG terminated for promoting IMG's
15 websites through spam?

16 MR. APGOOD: Objection, foundation.

17 A. I'm not positive. I think in total it's
18 like five or ten that we were actually able to track
19 down and terminate.

20 Q. Do you recall the specifics of any of
21 those?

22 A. I don't.

23 Q. Was an affiliate Zillium terminated for
24 sending spam?

25 A. Yes.

Page 37

1 Q. What were the circumstances surrounding
2 that termination?

3 A. We saw his name pop up in this whole
4 lawsuit, and we were actually trying to figure out
5 and remember what the circumstances were. I kind of
6 like focus more on preventing it than the actual, you
7 know, reason it happened. Zillium. I honestly -- I
8 don't remember.

9 Q. Do you know when Zillium was terminated?

10 A. Long enough for me not to remember.
11 Probably -- I don't remember exactly.

12 Q. Do you know who terminated Zillium?

13 A. I did.

14 Q. At any point was Zillium reinstated as an
15 affiliate of IMG?

16 A. Never.

17 Q. If the affiliate Zillium provided new
18 information to IMG, is it possible that Zillium became
19 an affiliate of IMG later?

20 MR. APGOOD: Objection, calls for
21 speculation.

22 A. It's possible.

23 Q. Was an affiliate Scorpion terminated?

24 A. Yes.

25 Q. Why?